

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WILDEARTH GUARDIANS,
301 N. Guadalupe St., Ste. 201
Santa Fe, NM 87501

Plaintiff,

vs.

**UNITED STATES BUREAU OF LAND
MANAGEMENT,**
1849 C Street NW
Washington, DC 20240

**UNITED STATES DEPARTMENT OF
THE INTERIOR,**
1849 C Street NW
Washington, DC 20240

Defendants.

Case No. 1:19-cv-02974

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. The Defendants United States Bureau of Land Management and United States Department of the Interior (together, “Defendants”) have violated the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* by failing to provide a determination on Plaintiff WildEarth Guardians’ FOIA requests within the time limits provided by the FOIA. This lawsuit requests an order that declares that Defendants have violated FOIA by withholding documents responsive to WildEarth Guardians’ requests, enjoins the agency to immediately provide a determination on WildEarth Guardians’ FOIA requests, and enjoins the agency to provide WildEarth Guardians with the files it has requested by a date certain.

JURISDICTION, VENUE, AND BASIS FOR RELIEF

2. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA.

3. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B), 703, and 28 U.S.C. § 1391.
4. Declaratory relief is appropriate under 28 U.S.C. § 2201.
5. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

6. Plaintiff WILDEARTH GUARDIANS (“Guardians”) is a non-profit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. WildEarth Guardians has offices in Colorado, Montana, New Mexico, Arizona, Washington, and Oregon. With more than 270,000 members and supporters, Guardians works to sustain a transition from fossil fuels to clean energy in order to safeguard the West. The records sought in this action are requested in support of these efforts.

7. Specifically, Guardians submitted two FOIA requests for records related to the Carlsbad Resource Management Plan for the Carlsbad Field Office in southeastern New Mexico. The failure of the Defendants to make determinations on our FOIA requests and provide responsive documents in a timely manner harms Guardians and its members by denying them records and information to enable them to better understand and scrutinize the way the federal government intends to manage energy development on federal lands.

8. Defendant U.S. BUREAU OF LAND MANAGEMENT is a federal agency within the U.S. Department of the Interior. It is in possession and control of the records sought by Guardians, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

9. Defendant U.S. DEPARTMENT OF THE INTERIOR is a federal executive department of the U.S. government. It is in possession and control of the records sought by Guardians, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

STATEMENT OF FACTS

10. On February 4, 2019, Guardians submitted separate Freedom of Information Act requests to (1) the Washington, D.C. office of BLM, and (2) the Department of the Interior’s Office of the Secretary requesting “Any and all records related to or concerning the Carlsbad Resource Management Plan for the Carlsbad Field Office which have been created, received, and/or transmitted by the DOI Office of the Secretary since January 1, 2011.” The FOIA requests were submitted via email.

11. FOIA requires that an agency “shall—[] determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor[.]” 5 U.S.C. § 552(a)(6)(A)(i)

12. Defendants were required to provide “determinations” on these FOIA requests pursuant to 5 U.S.C. § 552(a)(6)(A)(i) by March 5, 2019.

13. A determination consists of (1) a decision to comply or not comply with the request, (2) the reasons for the decision, (3) and, in the case of an adverse decision, a description of the requester’s rights to an appeal.

14. On July 29, 2019, the Washington, D.C. office of BLM sent Guardians an acknowledgment of their FOIA request. The request was assigned control number 2019-00995 and placed in the “complex” track.

15. On February 8, 2019, the Department of the Interior’s Office of the Secretary sent Guardians an acknowledgment of their FOIA request. The request was assigned control number OS-2019-00438 and placed in the “normal” track.

16. On July 16, 2019, in response to an inquiry from Guardians as to the status of the request, the Department of the Interior’s Office of the Secretary, indicated that request OS-2019-00438

“is in queue to be processed,” but “we cannot yet give you an accurate estimate of when this request will be processed.”

17. To date, it has been 168 business days since Guardians’ submitted its FOIA requests to Defendants.

18. Guardians has fully exhausted all administrative remedies required by FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

CAUSES OF ACTION

COUNT 1 VIOLATION OF THE FREEDOM OF INFORMATION ACT: DECISION DEADLINE VIOLATION

19. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

20. Guardians has a statutory right to have Defendants process its FOIA requests in compliance with FOIA.

21. Guardians’ rights were violated when Defendants unlawfully failed to respond to Guardians’ requests with a determination within the deadline imposed by FOIA. 5 U.S.C. § 552(a)(6)(A)(i).

22. Based on the nature of Guardians’ organizational activities, it will undoubtedly continue to employ FOIA’s provisions in information requests to Defendants in the foreseeable future.

23. Guardians’ organizational activities will be adversely affected if Defendants are allowed to continue violating FOIA’s response deadlines as it has in this case.

24. Unless enjoined and made subject to a declaration of Guardians’ legal rights by this Court, Defendants will continue to violate Guardians’ rights to receive public records under the FOIA.

25. Guardians is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA, for this violation. 5 U.S.C. § 552(a)(4)(E).

COUNT II
VIOLATION OF THE FREEDOM OF INFORMATION ACT: FAILURE TO COMPLY
WITH 5 U.S.C. § 552(a)(6)(C)

26. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

27. Pursuant to 5 U.S.C. § 552(a)(6)(C), “Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request.”

28. To make records “promptly available” means to release them within a few days or weeks, not months or years, after a determination is made. *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013).

29. Plaintiff’s organizational activities will be adversely affected if Defendants are allowed to continue to violate FOIA’s requirement to make records “promptly available” upon a determination by an agency to comply with a request for records.

30. Unless enjoined and made subject to a declaration of Plaintiff’s legal rights by this Court, Defendants will continue to violate the rights of Plaintiff to receive public records under the FOIA.

31. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

COUNT III
VIOLATION OF THE FREEDOM OF INFORMATION ACT: UNLAWFUL
WITHHOLDING

32. The allegations made in all preceding paragraphs are re-alleged and incorporated by

reference herein.

33. Guardians has a statutory right to the records it seeks, and there is no legal basis for Defendants to assert that any of FOIA's nine disclosure exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).

34. Guardians is entitled to reasonable costs of litigation, including attorneys' fees and costs pursuant to FOIA, for this violation. 5 U.S.C. § 552(a)(4)(E).

COUNT IV
VIOLATION OF THE FREEDOM OF INFORMATION ACT:
FAILURE TO COMPLY WITH 5 U.S.C. § 552(a)(7)(B)

35. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

36. Pursuant to 5 U.S.C. § 552(a)(7)(B), "Each agency shall . . . establish a phone line or Internet service that provides information about the status of a request to the person making the request . . . including . . . an estimated date on which the agency will complete action on the request."

37. Plaintiff asked BLM's Washington Office and DOI's Office of the Secretary for estimated dates of completion for its pending FOIA requests.

38. Defendants have not provided estimated dates of completion for the FOIA requests in this matter.

39. Based on the nature of Plaintiff's organizational activities, it will undoubtedly continue to employ FOIA's provisions in information requests to Defendants in the foreseeable future.

40. Plaintiff's organizational activities will be adversely affected if Defendants are allowed to continue violating FOIA's requirement to provide estimated dates of completion as it has in this case.

41. Unless enjoined and made subject to a declaration of Plaintiff's legal rights by this Court,

Defendants will continue to violate the rights of Plaintiff to receive public records under the FOIA.

42. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- 1.** Order Defendants in the form of injunctive relief to provide Plaintiff all of the information sought in this action by a date certain;
- 2.** Declare Defendants' failure to disclose the information requested by Plaintiff to be unlawful under FOIA, 5 U.S.C. § 552(a)(3);
- 3.** Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412, or any other applicable law; and
- 4.** Grant such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 3rd day of October, 2019.

/s/ John R. Mellgren
John R. Mellgren (D. D.C. Bar # OR0002)
Western Environmental Law Center
120 Shelton McMurphy Blvd., Ste. 340
Eugene, Oregon 97401
Ph: (541) 359-0990
mellgren@westernlaw.org

Allyson Beasley (NM Bar # 152658)
(pro hac vice application pending)
Western Environmental Law Center
208 Paseo del Pueblo Sur, Unit 602
Taos, New Mexico 87571
Ph: (575) 224-6260
beasley@westernlaw.org

Attorneys for Plaintiff WildEarth Guardians